

**SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

**HEARING OFFICER DIRECTIVE**

**DOCKET NOS. [2017-370-E](#), [2017-207-E](#), and [2017-305-E](#) ORDER NO. 2018-140-H**

**OCTOBER 9, 2018**

David Butler  
Hearing Officer

**DOCKET DESCRIPTION:**

**Docket No. 2017-370-E** – Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans

**Docket No. 2017-207-E** – Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent

**Docket No. 2017-305-E** – Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920

**MATTER UNDER CONSIDERATION:**

**Order of Presentation of Witnesses in Merits Hearing**

**HEARING OFFICER ACTION:**

Oral arguments on the order of presentation of witnesses in these Dockets were held during the pre-hearing conference on October 4, 2018. Counsel for Friends of the Earth/Sierra Club, pointed out *inter alia* that the Complaint in Docket No. 2017-207-E was filed before the Request or Joint Application and Petition in the other nuclear Dockets. (Note: The Complaint in Docket No. 2017-207-E was filed on June 22, 2017, whereas the Request in Docket No. 2017-305-E was filed on September 26, 2017, and the Joint Application and Petition in Docket No. 2017-370-E were not filed until January 12, 2018.) Further, counsel for Friends of the Earth/Sierra Club noted that a pre-hearing conference was actually held in Docket No. 2017-207-E in preparation for an eventual trial. (Note: The pre-hearing conference in Docket No. 2017-207-E was held on July 5, 2017.) Based on these facts, counsel for Friends of the Earth/Sierra Club argued that Docket No. 2017-207-E was well in process before the other Dockets, and for that reason, direct testimony in that

Docket should be presented first at the November 1, 2018 hearing. Counsel for several other parties agreed with Mr. Guild's assessment, including counsel for the South Carolina Attorney General, and the Office of Regulatory Staff ("ORS").

Counsel for South Carolina Electric and Gas Company ("SCE&G") argued that the testimony pre-filing schedule required SCE&G to pre-file its testimony and exhibits first, and that this, plus the importance of the issues in Docket No. 2017-370-E, should mandate that SCE&G present first at the November 1 hearing and that the pre-filing Order should dictate the order of presentation of the witnesses. Counsel for Friends of the Earth/Sierra Club noted that the scheduling of the hearing was not certain at the time of the filing of the Complaint in Docket No. 2017-207-E, and that order of pre-filing of testimony and exhibits is actually irrelevant to the order of presentation of the witnesses at the hearing.

Although this Hearing Officer disagrees with the concept of the pre-filing order being irrelevant to the order of presentation of the witnesses, it is apparent that, in actuality, and under the circumstances found in this case, both Docket Nos. 2017-207-E and Docket No. 2017-305-E were established with the filing of pleadings far in advance of the filing of SCE&G's Joint Petition and Application in Docket No. 2017-370-E. (June 22, 2017 and September 26, 2017 versus January 12, 2018, respectively.)

10 S.C. Code Ann. Regs. 103-840 governs the consolidation of two or more proceedings before the Commission for hearing purposes "where the rights of the parties or the public interest will not be prejudiced by such procedure." It appears to this Hearing Officer that the rights of Friends of the Earth/Sierra Club and ORS could be prejudiced by allowing SCE&G to proceed first at the consolidated hearing. The pleadings initiating Docket Nos. 2017-207-E and 2017-305-E were filed well in advance of the original pleadings filed in Docket No. 2017-370-E, and those parties bear the burden of proof as to their allegations; therefore I believe it is appropriate for their direct cases to be heard prior to SCE&G's. The issues in Docket Nos. 2017-207-E and 2017-305-E are fewer in number than in Docket No. 2017-370-E, and the views of the proponents on issues in the first two dockets could be "swallowed up" by the many issues in Docket No. 2017-370-E.

Any remaining issues in Docket Nos. 2017-207-E and 2017-305-E would be much more discrete than the multifaceted issues in Docket No. 2017-370-E. Counsel for Friends of the Earth/Sierra Club argued in a recent proceeding involving the intervention of Transco in the Dockets that two of the three substantive issues that he first raised in Docket No. 2017-207-E have largely been resolved in the sense that the project has been abandoned. Friends of the Earth/Sierra Club continues to request that the Commission consider the impact of these issues on the ratepayers, and the replacement energy future in lieu of abandonment of the nuclear plants. (09/04/18 Transco Hearing Tr. at 40.) Further, ORS argues that possible permanent rate reductions and possible credits to ratepayers for future bills or refunds to customers for prior revised rates collections are still the major topics seen in Docket No. 2017-305-E. In Docket No. 2017-370-E, the Commission must

consider the prudence of abandonment costs, a proposed business combination between SCANA and Dominion Energy, associated merger benefits, cost recovery plans, and other related issues.

In addition, the Order of Presentation of witnesses is clearly within the Commission's discretion. See the Editor's Note to S.C. Code Ann. Section 58-3-225, which refers to 1980 Act No. 440, Section 1, which states in part that "...in light of the importance of the Commission's functions, all proceedings before the Commission should be conducted in the most equitable, efficient, and dignified manner." This provision recognizes the importance of the Commission's functions and its effect on the daily lives of the citizens of South Carolina, and provides the power to the Commission to conduct its hearings in the manner that provides the parties and the public with an efficient tribunal process. In this case, the presentation of the witnesses first in Docket Nos. 2017-207-E and 2017-305-E will provide necessary efficiency to the nuclear hearings, in light of their dockets' limited scope and the fact that there is no other more logical place for the presentation of their direct case within the structure of the combined proceedings.

For these reasons, the direct testimony of Dr. Mark Cooper in Docket No. 2017-207-E will be presented first at the hearing, along with any rebuttal testimony that he may file. Second, ORS will present the direct testimonies of Anthony James and Elizabeth Warner in Docket No. 2017-305-E, plus any rebuttal testimonies that they may file. This will be followed by presentation of all testimonies of all SCE&G witnesses in all Dockets, followed by the testimonies of the intervenors, and all responsive testimonies of ORS. This procedure may require that ORS witnesses Anthony James and Elizabeth Warner testify twice. However, this is necessary in order to preserve ORS' reasonable rights to present testimony in the trial of this case in the most efficient order possible.

This ends the Hearing Officer's Directive.